Sup. Ct.

Cty. of Hamilton

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 317.

REYMANN BREWING COMPANY, APPELLANT,

vs.

HARRY BRISTER, TREASURER OF THE COUNTY OF JEFFERSON, OF THE STATE OF OHIO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

BRIEF OF [illegible], Counsel for Appellant.

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HARRY BRISTER, TREASURER OF THE COUNTY OF JEFFERSON, IN THE STATE OF OHIO.

Statement of the Case.

This is an injunction proceeding brought by the Reymann Brewing Company against Harry Brister, Treasurer of the County of Jefferson, in the State of Ohio, in the Circuit Court of the United States for the Southern District of Ohio, to restrain and enjoin the said Harry Brister from retaining the possession of certain personal property belonging to the Reymann Brewing Company, which the said Harry Brister had seized, justifying his rights so to do under the laws of the State of Ohio, which provided for the collection of that certain tax known as the "Dow Tax."

The application for a preliminary injunction was made to the Honorable William H. Taft, Circuit Judge of the United States, then sitting at Cincinnati, on January 13th, 1898, and the said Judge ordered the preliminary injunction to issue upon the giving of a bond in the penalty of five hundred dollars (Record page 6).

The bond was given as required (Record p. 7) and the temporary injunction became operative. A demurrer was interposed to the bill for the injunction (Rec. p. 11), it was afterward withdrawn, and the question of dissolving the injunction or perpetuating the same was submitted to the Honorable Albert Thompson sitting as United States Circuit Judge, upon an agreed statement of facts. (Rec. p. 12).

The case was argued to the Honorable Albert Thompson and submitted to him and after he had taken time to consider of the judgment to be rendered, an order was entered dismissing the bill of complaint and dissolving the injunction (Rec. p. 16). Where-

upon a petition for an appeal from said judgment was filed (Record p. 17) together with an assignment of errors (Rec. p. 18) and said appeal was perfected by the giving of a bond required (Rec. p. 20).

The facts alleged in the bill as being the material facts constituting the grounds upon which the complainant claims the relief prayed for, are briefly, that the plaintiff being a resident of the State of West Virginia and being the owner of a brewery or manufactory for the manufacture of beer, was engaged in the manufacture of such beer, said brewery being situated and said business carried on in the City of Wheeling in the State of West Virginia; that the said complainant had a store house for the storing of its beer in the City of Steubenville, County of Jefferson and State of Ohio; that packages of beer in excess of one gallon, were shipped from the manufactory in West Virginia to the agent of the storage house in the State of Ohio there to be stored until orders had been obtained by said agent for said beer from dealers engaged in the retail liquor business in the State of Ohio; that Harry Brister, the Treasurer of the County of Jefferson, undertook to collect the tax known as the Dow tax from this complainant, for the carrying on of said business in the City of Steubenville and State of Ohio, and this complainant refusing to pay said tax, the said Brister levied upon and seized all of the property described in the bill of complaint and threatened to make further seizures. That the packages of beer shipped and received as aforesaid and for which orders were taken were original unbroken packages each being a commercial unit, and that none of said packages were at any time ever broken by the said agent nor was their form in any wise changed at any time by him, but disposition was made of said packages by the said agent in the City of Steubenville, State of Ohio, in the same form and condition in which they had been received by him.

Assignment of Errors.

The appellant herein, being the complainant in the court below, excepted to the final order and decree rendered by the Honorable Albert Thompson, United States Circuit Judge, herein, and filed the 25th day of February, A. D. 1899, dissolving the preliminary injunction and dismissing the bill of complaint of the said complainant.

(1) Because the bill of complaint, together with the agreed statement of facts, show a right in the complainant, under the Constitution and laws of the United States, to conduct its business in the manner and form in which the same was conducted.

(2) Because the bill of complaint and agreed statement of facts present a case upon which the jurisdiction of a court of equity alone can be founded and to which there is no adequate remedy at law for the correction of any of the matters and things alleged in the said bill of complaint and shown in the agreed statement of facts.

(3) Because the complainant has by the said bill of complaint supported by the agreed statement of facts, made and stated a case to entitle the said complainant to the relief prayed for in said bill concerning the matters and things contained therein.

(4) Because his honor erred in holding that the provisions of the act of the General Assembly of the State of Ohio commonly known as "the Dow Law" and the statutes of the State of Ohio referring to the sale of intoxicating liquors, in so far as said laws forbid manufacturers and brewers of the State of West Virginia and all other States from importing beer into the State of Ohio for sale in the original unbroken package and the sale of said package after the importation, are not a discrimination against the citizens and products of other States in favor of the citizens and products of the State of Ohio, and therefore void as to citizens and products of States other than the State of Ohio.

(5) Because his honor erred in holding that the provisions of the said Dow Law and statutes, in so far as the same relate, refer and apply to beer imported by the manufacturer or brewer of another State from said other State into the State of Ohio for sale in the original package and a sale thereof after such importation, are a valid exercise of the police power of the State and comes within the provisions of the act of Congress of 1890 known as "the Wilson Act."

(6) Because his honor erred in holding the provisions of the said Dow Law and statutes to be laws enacted in the exercise of the Police Power of the State of Ohio in so far as the said Dow Law and statutes applied to an importation of the original package of beer by the manufacturer and the sale thereof after the importation has been made in the State of Ohio.

(7) Because his honor erred in holding that, in view of the provisions of the Dow Law, a non-resident manufacturer of beer cannot import the same into the State of Ohio in original packages in amounts exceeding one gallon and store and sell the same, either by himself or through his agent, without becoming liable to pay the Dow Tax.

(8) Because the statutes of the State of Ohio illegally discrimin-

ate in favor of the manufacturers and brewers of beer who have their plant located within the State of Ohio and against the manufacturers and brewers of beer who are residents of and have their plants respectively located in other States of the United States and which illegal discrimination, therefore, makes null and void said statutes in so far as manufacturers or brewers of beer who have their plants or breweries located in another State are concerned.

(9) Because the statutes of the State of Ohio do not require the Dow tax to be paid by the manufacturers or brewers of beer who reside and have their plant located within the State of Ohio when the amount sold exceeds one gallon, and do require according to said final order and decree, that a non-resident manufacturer or brewer of beer shall in any event pay the Dow Tax, and is a discrimination, therefore, against the constitutional rights of the non-resident brewers and manufacturers aforesaid.

(10) Because the statutes of the State of Ohio are regulations of commerce between the States as applied to the case as made in the bill of complaint and upon the agreed statement of facts and, that being such regulations, are therefore void.

(11) Because his honor erred in holding that the statute hereinbefore referred to is intended to apply to manufacturers and brewers of beer whose plants are not within the State of Ohio.

(12) Because his honor erred in holding that this complainant, The Reymann Brewing Company, a corporation, was trafficking in intoxicating liquors in the county of Jefferson, State of Ohio, as a dealer and not selling as a manufacturer, and that it was therefore not entitled to the rights of a non-resident manufacturer engaged in inter-state commerce.

(13) Because his honor erred in dissolving the injunction and dismissing the bill of complaint of the complainant.

(14) Because his honor erred in refusing to order that the preliminary injunction heretofore granted be made permanent, according to the tenor of the prayer in the bill of complaint.

The Facts.

The facts upon which his Honor, Judge Albert Thompson, dismissed the temporary injunction and the bill of complaint, are found on page 12 of the printed record, and are as follows:

"The Reymann Brewing Company, the complainant, is a corporation resident in and a citizen of the State of West Virginia, and owns and operates a brewery at Wheeling, West Virginia, where it manufactures a beverage of malt and intoxicating liquor commonly

known as beer. It packs said beer in wooden barrels of various sizes and also in glass bottles, which bottles are packed in wooden boxes called cases, twenty-four quart bottles or thirty-six pint bottles being packed in each case.

These barrels and cases are packed at the brewery of the Reymann Brewing Company, at Wheeling, in the State of West Virginia, there delivered to the common carrier, the railroad company, and shipped to Steubenville, in the county of Jefferson, in the State of Ohio, where they are received by Bert Meyers, who is employed by the Reymann Brewing Company in the capacity of soliciting agent, salesman and driver, and who calls on retail dealers in intoxicating liquors at their place of business in and about said City of Steubenville, and as such agent then and there solicits orders for and sells any number of the above-described packages desired. He then loads on the wagon owned by the Reymann Brewing Company the barrels or cases above described and delivers them to the purchasers in the original unbroken package in the same shape and condition as delivered to the common carrier at the brewery at Wheeling. Said agent also makes sales of said packages at and delivers the same from the place where stored at Steubenville. In no instance are any of the barrels or cases opened until after sold and delivered to the purchaser, and no change is made in any of the packages from the time they are packed at the brewery at Wheeling until delivered to the person purchasing the same.

Packages received by the said Bert Meyers at the railway station at Steubenville for which he has not received orders or which he has not already sold are stored in a room on the ground floor of a cold-storage house in said City of Steubenville, for which the Reymann Brewing Company pays a regular monthly rental, and of which room the said brewing company has the exclusive use and possession. The packages not delivered directly from the railway station to purchasers are delivered from the said storage house or room upon orders solicited, as aforesaid, and upon sales then and there at said storage room made. The price of the beer thus delivered is collected in some instances from time to time by a collector from the brewery at Wheeling, who calls on the purchasers and collects, and in other instances such collections are made by said agent, Bert Meyers at the time of sale and delivery at said storage-room.

During the period for which the assessment hereinafter mentioned were made the said Reymann Brewing Company carried on

its beer business in said city of Steubenville in the same manner as herein described.

The horses, harness and wagon described in the bill on which the defendant, Harry Brister, has levied, and which he has taken into his possession are used by the Reymann Brewing Company solely in the matter of delivering to purchasers the packages above described.

The barrels and cases of beer described in the bill were packed at the brewery at Wheeling and shipped in the manner above described to Steubenville, Ohio, placed in the store-room above mentioned, and were to be there sold and delivered in the manner above described, when they were levied on and taken possession of by the defendant, Harry Brister. The defendant, Harry Brister, is Treasurer of Jefferson County, in the State of Ohio, and as such Treasurer did so levy upon and take into his possession and has advertised for sale the following personal property of the Reymann Brewing Company.

Two horses (bay geldings), two horse-covers, one set of double harness, one beer wagon, thirty-seven of said original and unbroken cases of beer containing quarts, four of said original and unbroken cases of beer containing pints, sixty-five original and unbroken barrels of beer containing one-eighth size, one hundred and fourteen original and unbroken wooded barrels of beer, one-quarter size, twenty-nine original and unbroken wooden barrels of beer of one-half size; all of which he has done, as said Treasurer of Jefferson County, Ohio, for the purpose of collecting from the said Reymann Brewing Company certain taxes or assessments and penalties amounting to $873.60, and charged against said company on the tax duplicate in the office of said treasurer under and by virtue of a law of the State of Ohio entitled "An act providing against the evils resulting from the traffic in intoxicating liquors," passed May 14th, 1886, (see Ohio Laws 83, page 157) as amended March 21, 1887 (see Ohio Laws, vol. 84, p. 224), March 26, 1888 (see Ohio Laws, vol. 85, p. 117), and February 20, 1896), see Ohio Laws, vol. 92, p. 34), known as the Dow Law; which said levy and seizure were duly made and which amount ($873.60) the said Reymann Brewing Company lawfully owes if, under the circumstances in this statement set forth, and the law herein referred to, said company or its business in said City of Steubenville as herein described, should and may, lawfully be assessed as aforesaid.

The defendant will, unless restrained by the court, insist on collecting future assessments of the complainant under said Dow law

in the manner prescribed by said law—that is to say, by further seizures.

It is agreed by both parties to the above styled cause that the foregoing statement is a true statement of the facts, and that the said cause may be submitted to the court on said statement of facts agreed.

Argument.

This case then presents the question to this court as to whether or not the liquor laws of the State of Ohio are a valid exercise of the police power in the light of the Wilson Act of Congress of 1890 as applied to the transaction disclosed in the agreed statement of facts.

It will be noted that the agreed statement of facts shows sales to and ORDERS SOLICITED FROM, THE RETAIL DEALERS in intoxicating liquors, and it will also be noted that the facts show in every instance a sale in excess of one gallon, as each barrel or package contained more than one gallon of beer; it also appears that Bert Meyers was the agent of the manufacturer which manufactured the product sold. It is also here pointed out emphatically to the court, that Section 8899 (8) of the Statutes of Ohio reads, "The phrase, trafficking in intoxicating liquors as used in this act, means the buying or procuring and selling of intoxicating liquors otherwise than upon prescription issued in good faith by reputable physicians in active practice, or for exclusively known mechanical, pharmaceutical or sacramental purposes, BUT SUCH PHRASE DOES NOT INCLUDE THE MANUFACTURE OF INTOXICATING LIQUORS FROM THE RAW MATERIAL, AND THE SALE THEREOF AT THE MANUFACTORY, BY THE MANUFACTURER OF THE SAME IN QUANTITIES OF ONE GALLON OR MORE AT ANY ONE TIME."

And it will also be noted that the act of the General Assembly of Ohio contemplates the assessment and collection of the tax upon the business of trafficking in intoxicating liquors as thus defined. Subsequent to the line of decisions of Brown v. Maryland, 12 Wheaton, 419; Bowman v. The Railway Company, 125 U. S. 425, and Leisy v. Hardin, 135 U. S. 100 (to all of which reference is here made for the earlier law applicable to this case). It must be conceded that certain fundamental principles concerning rights secured by the Constitution of the United States were firmly established, to-wit: that Congress alone had the power to regulate commercial transactions between the different states and citizens thereof; that the states themselves had no right to prescribe the rule

or legislate upon the question; that so long as an article has connected with it the element of interstate commerce, it is subject alone to the regulations of Congress and could be in no wise affected by the provisions or restrictions of the state; that a legitimate subject of commerce could be imported from one state into another, and the right to import carried with it the incidental right to sell the article so imported free and unhampered by the control or laws of the state into which the importation was made. That ardent spirits, distilled liquors, ale and beer were lawful subjects of exchange, barter and traffic, but it is now understood to be competent for a state to control and regulate the sale of and prescribe rules governing intoxicating liquors while remaining in the original package and which HAD BEEN SHIPPED INTO SUCH STATE from another state to the same extent that such state could control and regulate its own domestic products. Under the provisions of that law, however, the state seeking to regulate the sale of and to govern imported intoxicating liquors must do so through its laws enacted in good faith in the exercise of its police powers, and the requirement is pre-eminent that such a law must be a police law IN GOOD FAITH containing in itself SUBSTANTIAL RELATIONS BETWEEN ITS PROVISIONS AND THE OBJECTS SOUGHT TO BE ACCOMPLISHED, and furthermore we understand that NO STATE HAS TO-DAY OR EVER DID HAVE THE POWER TO DISCRIMINATE injuriously against the products of other states, in articles whose MANUFACTURE and USE are not forbidden AND WHICH ARE THEREFORE THE SUBJECTS OF LEGITIMATE COMMERCE.

The Constitution of the State of Ohio, upon this subject provides "no license to traffic in intoxicating liquors shall hereafter be granted, but the General Assembly may by law provide against the evils resulting therefrom." Article 16, section 9, Const. of Ohio.

We find that the General Assembly has provided a system, which in lieu of a license, taxes the business of trafficking in intoxicating liquor; we find that under Section 8899 (8) that no tax is imposed upon the MANUFACTURE AND SALE where the sale is made in amounts exceeding one gallon and made AT THE PLANT OR MANUFACTORY. We find then that the express provisions and direct EFFECT of the exception is to RELIEVE THE BREWERY OR DISTILLERY WHICH HAS ITS PLANT LOCATED IN THE STATE OF OHIO FROM LIABILITY TO THESE TAXES; we find that if by reason of the fact of a manufactory, brewery or distillery BEING LOCATED WITHIN THE

LIMITS OF THE STATE OF OHIO it can sell at its plant FREE AND EXEMPT from taxation intoxicating liquors in quantities of one gallon or more at any one time. We contend that here is an express, positive and injurious DISCRIMINATION in favor of the manufacturer of Ohio and against the manufacturer whose plant is located in some state other than Ohio. Under this law a manufacturer could have sold at his brewery in the County of Jefferson free and exempt from taxation the same packages which the agent, Bert Meyers, sought to sell in the town of Steubenville and this by the express provisions of the Act itself, YET WHEN A MANUFACTURER WHOSE PLANT IS LOCATED BEYOND THE LIMITS OF THE STATE OF OHIO AND WITHIN THE LIMITS OF SOME OTHER STATE seeks to exercise the constitutional right and privilege of trading with and selling its products to the citizens of Ohio, it is contended that the collection of this tax can be enforced as to such foreign manufacturer and for the express and positive reason that the sale is not at the plant, while on the other hand, the Ohio manufacturer is exempt therefrom for the same reason namely: conversely stated, that the sale is made at the plant of the domestic and resident manufacturer. There can be no question but that the law expressly discriminating in favor of the manufacturer resident within the state and whose plant, brewery or distillery is within the county where the sale is made, and there can be no question that if the transaction engaged in by Bert Meyers had been carried on by a domestic manufacturer resident within and whose plant was established and located at the County of Jefferson and State of Ohio, said manufacturer would have been relieved from the burden of such taxes.

The decisions of the Supreme Court of Ohio points clearly to the distinction between the seller and the manufacturer with reference to a liability to the payment of this tax in a manner so positive as not to possibly admit of any mistake being made on the subject. It is said: "a sale by one who is not a manufacturer of twenty-five quarts of beer put up in bottles of one quart each, not upon the prescription of a physician or for any known mechanical, pharmaceutical or sacrametal purpose, but to be drank by the person to whom sold is a sale at retail within the meaning of the 11 Section of the Act known as the Dow Law. Kaufman v. Village of Hillsboro, 45 Ohio St. 700.

And more pointed and clear is the following: "It was for the legislature to determine the form of the traffic that required to be regulated as a source of evil, it has in a measure drawn a line be-

tween a distillery and a brewery on the one hand and a saloon on the other. There is nothing unreal in the distinction. It is known by all men, and in one respect probably too well by many men. And unless ABSOLUTE PROHIBITION is resorted to no more practical distinction could be made. The evils that result from intoxicating liquor as a beverage occur at the place where it is sold, not where it is manufactured and sold in large quantities. But if the legislature has erred in not including what has been excepted from the operation of the law, it is simply an error of judgment in the exercise of its authority and can not be reviewed by the courts." Adler. vs. Whitbeck, 44 Ohio St. 574.

And again the court has spoken in the following tenor: "It is not claimed that the law does not purport to operate equally upon all wholesalers WHO ARE NOT MANUFACTURERS. As between the WHOLESALE DEALER and the MANUFACTURER there is manifestly a real tangible difference, though they have characteristics in common. The General Assembly has chosen to classify and to DISCRIMINATE ACCORDINGLY. If the classification is proper the discrimination can not be objected to. We are not prepared to say that the classification is not warranted." Senior vs. Ratterman, 44 Ohio St. 678.

For the purpose of illustrating the exact position of the laws of Ohio with reference to the subject of intoxicatingliquors, let us suppose that instead of confining the scope and operation of the laws merely to intoxicating liquors, that the legislature of Ohio had enacted a law that would impose a tax on every commodity of life sold within the State of Ohio, and excepted from the liability of such tax all sales made at the place where each particular commodity was manufactured or produced, the necessary effect of such an enactment would be to relieve the owner of the iron mill from a tax for the sale of nails where the sale was made at the mill, the owner of a farm from the payment of the tax upon a sale of butter, eggs and other products of the farm where the sale was made upon the farm, the owner of the glass factory and pottery from the payment of the tax upon the sale of glass and pottery ware where the sale has been made at the glass or pottery plant, and so ad infinitum; the direct and necessary effect then of this law so far as the same related to non-resident producers would be to shut them out of the Ohio market, or compel them to pay the tax if they wished to come into such markets and compete with the Ohio manufacturers. The necessary effect of such a law would be to discriminate injuriously against the non-resident producers; and now confining the law

simply to its operation upon the sale of intoxicating liquors, or as called in the State of Ohio, the business of trafficking in intoxicating liquor, THE DIRECT AND NECESSARY EFFECT OF THIS LAW IS TO SHUT OUT THE NON-RESIDENT COMPETITOR unless he pays the tax, and it is an express and positive discrimination against such a non-resident, BY REASON OF THE FACT THAT HIS PLANT OR MANUFACTORY OR DISTILLERY IS NOT LOCATED WITHIN THE LIMITS OF THE STATE OF OHIO.

The Wilson Act of Congress deals with state laws enacted in the exercise of the police power; it is submitted that there has been no valid or bona fide exercise of the police powers by the General Assembly of the State of Ohio in so far as such an exercise is expressed in the Dow Law. It is submitted here that prior to the enactment of the Wilson Act a uniform treatment of commerce was required upon the part of the states, and it is here contended that although Congress has authorized the states to act by virtue of the Wilson Act of Congress of 1890, YET IT DID NOT CONTEMPLATE THAT THIS UNIFORMITY OF TREATMENT OF THIS SUBJECT SHOULD BE BROKEN IN UPON, BUT RATHER THAT IT SHOULD BE MAINTAINED. Under the decisions of this court rendered subsequent to the enactment of the Congressional legislation referred to, it must be conceded that this court has said that a state may now PROHIBIT the MANUFACTURE, SALE and USE of intoxicating liquors and that such legislation is valid whether applied to a domestic product or an imported foreign one in the original package, in as much as such legislation constitutionally declares that intoxicating liquors ARE NOT A PART OF COMMERCE; that they are contraband, and that within the jurisdictional limits of such legislation intoxicating liquor is not and can not be A COMMERCIAL ARTICLE. And upon the other hand where a State RECOGNIZES as lawful the MANUFACTURE, SALE and USE of intoxicating liquors, THEN IT HAS NOT DESTROYED THE STANDING OF INTOXICATING LIQUOR AS A COMMERCIAL ARTICLE, it has not taken it out of the channels of commerce and A UNIFORM RULE MUST BE ESTABLISHED WITH REFERENCE TO ITS MANUFACTURE, USE AND SALE.

The law of Ohio rather than being a valid exercise of the police power is defective in every particular. It is not aimed against the MANUFACTURER, it in no wise affects the USE of intoxicating liquor; it simply goes to the business of TRAFFICKING and to

insure particularly the Legislature of Ohio has seen fit to define the meaning and scope of the phrase, "TRAFFICKING IN INTOXICATING LIQUOR." Can it be said that a law so lame, so incompetent, so defective, can be set up to obstruct the channels of commerce and to prevent the foreign producer and manufacturer from dealing and trading with and selling to the citizens of the State of Ohio within the limitis of the State of Ohio? Surely not. This law can have no standing when applied to a transaction that has its inception beyond the territorial limits of the State of Ohio.

By the decisions of the Supreme Court of the United States, the principle that state legislatures cannot discriminate against citizens or products of other states is so well established that merely a few of the authorities upon that question are quoted from here, made part of this brief and referred to by counsel for the appellant.

"There is no attempt to DISCRIMINATE injuriously against the products of other states, or the rights of their citizens. But a law having such OPERATION would, in our opinion, be an infringement of the provisions of the Constitution which relate to these subjects, and therefore void." Woodruff vs. Parham, 8 Wall. 140.

The illustration used in an early part of this brief showing the application of such vicious legislation to all commodities was anticipated by this court.

"If this can be done in reference to LIQUORS, it can be done with reference to ALL THE PRODUCTS OF A SISTER STATE, and in this mode one State can establish a COMPLETE SYSTEM OF NON-INTERCOURSE in her commercial relations with all other States of the Union." Hinson vs. Lott, 8 Wall. 150.

"The tax in the case before us, if it were of the character we suggested, DISCRIMINATING ADVERSELY TO THE PRODUCTS OF ALL THE OTHER STATES IN FAVOR OF THOSE OF ALABAMA, and involving a principle which might lead to actual commercial non-intercourse, would, in our opinion, belong to that class of legislation and be forbidden by the clause of the Constitution just mentioned." 8 Wall. 152.

Uniformity of treatment on the subject of commerce is strictly required, yet here is legislation contended to be valid which gives to each brewer or manufacturer in the State of Ohio the right to make certain sales at their plants, and they could ALL CARRY ON BUSINESS IN THIS MANNER FREE AND EXEMPT FROM TAXATION, WHILE EVERY NON-RESIDENT BY REA-

SON OF HIS FOREIGN ORIGIN COULD NOT COMPETE UPON THE SAME BASIS WITH THE DOMESTIC MANUFACTURER and could not make a sale in the State of Ohio without paying the tax; there is a manifest absence of uniformity of regulation in the act.

"It will not be denied that that portion of commerce with foreign countries and between the States which consists in the transportation and exchange of commodities, is of national importance, and admits and REQUIRES UNIFORMITY OF REGULATION. The very object of investing this power in the General Government was to INSURE THIS UNIFORMITY AGAINST DISCRIMINATING STATE LEGISLATION." Welton vs. Missouri, 91 U. S. 280.

"It is sufficient to hold now that the commercial power continues until the commodity has ceased to be the subject of DISCRIMINATING LEGISLATION by reason of its foreign character. The power protects it even after it has entered the State FROM ANY BURDEN IMPOSED BY REASON OF ITS FOREIGN ORIGIN. The Act of Missouri encroaches upon this power in this respect, and is therefore, in our judgment, unconstitutional and void." Welton vs. Missouri, 91 U. S. 282.

In 109 U. S. 439, this Court has again fully stated the principle and the reason of it as the basis of our commercial union.

"In view of these and other decisions of this Court it must be regarded as settled that no State can, consistently with the Federal Constitution, impose upon the products of other States, brought therein for sale or use, or upon citizens engaged in the sale therein or the transportation thereto, of the products of other States more onerous public burdens or taxes than it imposes upon the like products of its own territory.

"If this were not so, it is easy to perceive how the power of Congress to regulate commerce with foreign nations and among the several States could be practically annulled, and the equality of commercial privileges secured by the Federal Constitution to the citizens of the several States may be materially abridged and impaired. 'Over whatever other interests of the country,' said Mr. Webster, 'this government may diffuse its benefits and blessings, it will always be true, as matter of historical fact, that it had its immediate origin in the necessities of commerce and for its immediate object the relief of those necessities by removing their causes, and by establishing A UNIFORM AND STEADY SYSTEM.' But State legislation such as that indicated in the cases which have been

cited, if maintained by this Court, would ultimately bring our commerce to that 'oppressed and degraded state' existing at the adoption of the present Constitution, when the helpless, inadequate Confederation was abandoned and a National Government instituted, with full power over the entire subject of commerce EXCEPT THAT WHOLLY INTERNAL TO THE STATES COMPOSING THE UNION." Guy vs. Baltimore, 100 U. S. 439-440.

The State of Ohio does not declare the MANUFACTURE of intoxicating liquors and the SALE thereof by the manufacturer unlawful, it does not in any sense, expressly or by implication, declare intoxicating liquor CONTRABAND AND HENCE NOT A COMMERCIAL ARTICLE, and consequently cannot fairly call the act in question a POLICE ACT.

In the exercise of its police powers a State may exclude from its territory, or prohibit the sale therein of any articles, which in its judgment, fairly exercised, are prejudicial to the health or which would endanger the lives or property of its people. But if the Stateunder the guise of exerting its police powers, should make such exclusion or prohibition applicable solely to articles of that kind, that may be produced or manufactured in other States, the Courts would find no difficulty in holding such legislation to be in conflict with the Constitution of the United States."

It is the duty of the National Government, so long as the State of Ohio accords to the MANUFACTURE AND SALE of intoxicating liquors the present treatment of the subject, to protect AND SECURE TO RESIDENTS AND CITIZENS OF OTHER STATES EQUAL RIGHTS WITH THE RESIDENTS AND CITIZENS OF THE STATE OF OHIO.

"The power of the national government over commerce with foreign nations and among the several States is broad and comprehensive. It reaches the interior of every State of the Union, so far as it may be necessary to protect the products of other States and counties from discrimination by reason of their foreign origin." Brown v. Maryland, 12 Wheat. 419; Guy v. Baltimore, 100 U. S. 443.

Again this Court exponded the principle as follows:

"IT WAS AGAINST LEGISLATION OF THIS DISCRIMINATING KIND THAT THE FRAMERS OF THE CONSTITUTION INTENDED TO GUARD WHEN THEY VESTED IN CONGRESS THE POWER TO REGULATE COMMERCE AMONG THE SEVERAL STATES." Webber vs. Virginia, 103 U. S. 350.

"There would otherwise be no security against CONFLICTING REGULATIONS of different States, EACH DISCRIMINATING IN FAVOR OF ITS OWN PRODUCTS and citizens and AGAINST THE PRODUCTS AND CITIZENS OF OTHER STATES." County of Mobile vs. Kimball, 102 U. S. 691-697; Webber vs. Virginia, 103 U. S. 351.

"In Brown vs. Houston, 114 U. S. 622, 630, it was declared that the power of Congress over commerce among the States is certainly so far exclusive that no State has power to make any law or regulation which will impose any discriminating burden or tax upon the citizens or products of other States coming or brought within its jurisdiction." Bowman vs. Chicago, 125 U. S. 495.

That this statute was enacted in good faith, can in no wise affect the ultimate decision; the NECESSARY EFFECT arising from its operation determines its validity.

"The presumption that this statute was enacted in good faith for the purpose expressed in the title, namely, to protect the health of of the people of Minnesota, cannot control the final determination of the question whether it is not repugnant to the Constitution of the United States. THERE MAY BE NO PURPOSE on the part of the Legislature to violate the provisions of that instrument, and yet a statute enacted by it, under the forms of law, MAY, BY ITS NECESSARY OPERATION, be destructive of rights granted or secured by the Constitution. In such cases the courts must sustain the supreme law of the land by declaring the statute unconstitional and void. This principle of constitutional interpretation has been often announced by this Court. In Henderson, &c. vs. New York, &c., 92 U. S. 259, 268, where a statute of New York was held to be unconstitutional and void as a regulation of such commerce, the Court said that "in whatever language a statute may be framed, its purpose must be determined by its NATURAL and REASONABLE EFFECT. The motives of the legislators, considered as the purpose they had in view, will always be presumed to be to accomplish that which follows as the natural and reasonable effect of their enactments.

"If therefore a statute purporting to have been enacted to protect the public health, the public morals or the public safety, HAS NO REAL OR SUBSTANTIAL RELATIONS TO THOSE OBJECTS, OR IS A PALPABLE INVASION OF RIGHTS SECURED BY THE FUNDAMENTAL LAW, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution. Upon the authority of those cases, and others that could be cited, it

is our duty to inquire in respect to the statue before us, not only whether there is a real or substantial relation between its avowed objects and the means devised for attaining those objects, but whether, by its necessary or natural operation, it impairs or destroys rights secured by the Constitution of the United States." Minnesota vs. Barber, 136 U. S. 320.

"It will not do to say—certainly no judicial tribunal can, with propriety, assume—that the people of Minnesota, may not, with due regard to their health rely, upon inspection in other States of animals there slaughtered for purposes of human food. If the object of the Statute has been to deny altogether to the citizens of other States the privilege of selling within the limits of Minnesota, for human food, any fresh beef, veal, mutton, lamb or pork, from animals slaughtered outside that State, and to compel the people of Minnesota wishing to buy meats, either to purchase those taken from animals inspected and slaughtered in the State or to incur the cost of purchasing them when desired for their own domestic use at points beyond the State, that object is attained by the Act in question. Our duty to maintain the Constitution will not permit us to shut our eyes TO THESE OBVIOUS AND NECESSARY RESULTS of the Minnesota Statute. If this legislation does not make such DISCRIMINATION against the products and business of other States, in favor of the products and business of Minnesota. IT WOULD BE DIFFICULT TO ENACT LEGISLATION THAT WOULD HAVE THAT RESULT." Minnesota vs. Barber, 136 U. S. 322-323.

If the citizens of Ohio desire to buy the products of FOREIGN MANUFACTURERS FREE from the Dow tax, of course they could cross the Ohio River and purchase in West Virginia of the West Virginia manufacturers; and if the West Virginia manufacturer desired to sell on an equaity with the Ohio manufacturer, that is exempt from taxes, he would have to invite the Ohio purchaser into the State of West Virginia to consummate the transaction; this court has said that this is discrimination.

"One other suggestion by the counsel for the State deserves to be examined. It is that so far as this statute is concerned, the people of Minnesota can purchase in other States fresh beef, veal, mutton, lamb or pork, and bring such meats into Minnesota for their personal use. We do not perceive that this view strengthens the case for the State, for it ignores the right of the people of Minnesota to bring into that State, for purposes of sale, sound and healthy

meat, wherever such meat may have come into existence." 136 U. S. 328-329.

"If the statute, while permitting the sale of meats from animals slaughtered, inspected and 'certified' in that State, had expressly forbidden the introduction from other States, and their sale in Minnesota of all fresh meats of every kind, without making any distinction between those that were from animals inspected on the hoof and those that were not inspected, its unconstitutionality could not have been doubted. And yet it is so framed that this precise result is attained as to all sales in Minnesota for human food, of meats from animals slaughtered in other states." 136 U. S. 329.

The necessary effect of this tax assessed upon the business as to their compelling a non-resident to pay the tax and excuse the domestic manufacturer from so doing is to prevent a non-resident from coming into competition with the domestic manufacturer without reference to the purity or quality of the beer.

"It is for all practical ends, a statute to prevent the citizens of distinct states having for sale fresh meats (beef, veal or mutton) from coming into competition upon terms of equality with local dealers in Virginia. As such, its repugnancy to the Constitution is manifest. The case, in principle, is not distinguishable from Minnesota vs. Barber where an inspection statute of Minnesota relating to fresh beef, veal, mutton, lamb and pork offered for sale in that State was held to be a regulation of interstate commerce and void, because by its necessary operation it excluded from the markets of that State practically all such meats, in whatever form, and although entirely sound and fit for human food, from animals slaughtered in other States." Brimmer vs. Rebman, 138 U. S. 83.

The manifest advantage that this act gives to the domestic manufacturer when competing in a domestic market with foreign manufacturers is so apparent as to excuse being urged.

And in Walling vs. Michigan, 116 U. S. 459, 460, the court applied the same principle to intoxicating liquors, products of other States, Judge Bradley saying:

"That this must give an immense advantage to the products manufactured in Michigan, and to the manufacturers and dealers of that State, is perfectly manifest."

"It is suggested by the learned Judge who delivered the opinion of the Supreme Court of Michigan in this case that the tax imposed by the Act of 1875 is an exercise by the Legislature of Michigan of the police power of the State for the discouragement of the use of intoxicating liquors, and the preservation of the health and the

morals of the people. This would be perfect justification of the Act if it did not discriminate against the citizens and products of other States in a matter of commerce between the States, and thus usurp one of the prerogatives of the National Legislature. The police power cannot be set up to control the inhibitions of the Federal Constitution, or the power of the United States Government created thereby." New Orleans Gas Co. vs. Louisiana Light Co., 115 U. S. 650; Walling vs. Michigan, 116 U. S. 459-460.

"In Minnesota vs. Barber, 136 U. S. 313, 326, 328, the facts so clearly resemble those shown by the record now under consideration, and the principles stated in the opinion are so applicable that we shall state them with some particularity." pp. 95, 96, 165 U. S., Donald vs. Scott.

"This Court, in an opinion delivered by Mr. Justice Harlan, while conceding that the statute was enacted in good faith, for the purpose expressed in the title, namely, to protect the health of the people of Minnesota, held that, as the necessary effect of the Act was to deny altogether to the citizens of other States the privilege of selling within the limits of Minnesota, for human food, any fresh beef, mutton, veal or pork from animals slaughtered outside of the State, and to compel the people of Minnesota, wishing to buy such meats, either to purchase those taken from animals inspected and slaughtered in the State, or to incur the cost of purchasing them, when desired for their own domestic use, at points beyond the State, such legislation was void as constituting a discrimination against the products and business of other States in favor of the products and business of Minnesota, and as depriving the people of Minnesota the right to bring into that State, for the purposes of sale and use, sound and healthy meat, wherever such meat may have come into existence. It was said p. 97, 165 U. S. * * * * * It is, however, contended, in behalf of the State, that there is in fact no interference by this statute with the bringing of cattle, sheep and swine into Minnesota from other States, nor any discriminatioin against the products and business of other States, for the reason—such is the argument—that the statute requiring an inspection of animals on the hoof, as a condition of the privilege of selling, or offering for sale, in the State, the meats taken from them, is applicable alike to all owners of such animals, whether citizens of Minnesota or citizens of other States. To this we answer that a statute may, upon its face, apply equally to the people of all the States, and yet be a regulation of interstate commerce which a State may not establish.. A burden imposed by a state upon interstate commerce is

not to be sustained simply because the statute imposing it applies alike to the people of al lthe States, including the people of the State enacting such statute. Robbins vs. Shelby Taxing District, 120 U. S. 489, 497; cause of the State Freight Taxing District, 15 Wall. 232. The people of Minnesota have as much right to protect against the enactments of that State, interfering with the freedom of commerce among the States, as have the people of other States. Although this statute is not avowedly, or in terms, directed against the bringing into Minnesota of the products of other States, its necessary effects is to burden or affect commerce with other States, as involved in the transportation into that State, for the purpose of sale there, of all fresh beef, veal, mutton, lamb or pork, however free from disease may have been the animals from which it was taken." Donald vs. Scott, 165 U. S. 98.

As has been urged before, this law NEITHER FORBIDS THE MANUFACTURE AND SALE OF INTOXICATING LIQUOR and it does not PROVIDE EQUAL REGULATIONS FOR THE INSPECTION AND SALE OF ALL DOMESTIC AND IMPORTED LIQUORS, consequently it fails as a police law and does not come within the purview of the Wilson Act of Congress of 1890.

"1. SUCH A LAW MAY FORBID ENTIRELY THE MANUFACTURE AND SALE OF INTOXICATING LIQUORS AND BE VALID."

"2. OR IT MAY PROVIDE EQUAL REGULATIONS FOR THE INSPECTION AND SALE OF ALL DOMESTIC AND IMPORTED LIQUORS AND BE VALID. But the State cannot, under the Congressional legislation referred to, establish a system which, in effect, DISCRIMINATES between interstate and domestic commerce in commodities to make and use which are admitted to be lawful." P. 100, 165 U. S., Donald v. Scott.

"It is sufficient for the present cases to hold, as we do, that when a State RECOGNIZES THE MANUFACTURE, SALE AND USE OF INTOXICATING LIQUORS AS LAWFUL, IT CANNOT DISCRIMINATE AGAINST THE BRINGING OF SUCH ARTICLES IN, AND IMPORTING THEM FROM OTHER STATES; that such legislation is void as a hindrance to interstate commerce and an unjust preference of the products of the enacting State as against similar products of the other States." Donald v. Scott, 165 U. S. 101.

If the State of Ohio has provided any contingency upon which its local manufacturer can sell exempt from liability, then the same exemption can not be denied to another and a non-resident, that

arises or grows out of the fact of such other's foreign origin or status.

In Donald v. Scott, 165 U. S. 100, the Supreme Court say of the Wilson Bill:

"THAT LAW WAS NOT INTENDED TO CONFER UPON ANY STATE THE POWER TO DISCRIMINATE INJURIOUSLY AGAINST THE PRODUCTS OF OTHER STATES." Donald v. Scott, 165 U. S. p. 100.

Under the Wilson Act of Congress of 1890, original packages of imported liquor fell within the jurisdiction and subject to State laws immediately after the importation had ceased and the imported package had reached the hands of the consignee, yet no new power was granted by this Act. In re Rahrer, 140 U. S., an impediment was simply removed which had theretofore prevented State laws from being operative at that time; yet the constitutional rights of the citizens still remain secured to them; among which are the rights of citizens of one State to TRADE AND COMPETE IN ANOTHER STATE WITH CITIZENS AND MANUFACTURERS OF SUCH OTHER STATE, and to conduct such trade and competition on EQUAL GROUNDS and upon the same basis as each and every individual competitor or manufacturer of such other State.

The State law of Ohio under discussion does not accord this right to the foreign manufacturer of beer, yet in the latest utterance upon this subject, and concerning this subject matter, this court has spoken in unmistaken terms.

"Beyond dispute the respective States have plenary power to regulate intoxicating liquors within their borders, and the scope and extent of such regulations depend solely on the law-making power of the State, PROVIDED ALWAYS THEY DO NOT TRANSCEND THE LIMITS OF STATE AUTHORITY BY INVADING RIGHTS WHICH ARE SECURED BY THE CONSTITUTION of the United States, and provided further that the regulations as adopted do not operate a discrimination against the residents and citizens of other States of the Union." Vance v. Vandercook, 18 Sup. Ct. Rept'r, 678.

The Constitution and Statutes of Ohio then not prohibiting the manufacture and use of intoxicating liquor; making a sale thereof even as a beverage and when sold in small quantities legal, and assessing a tax upon the business; containing no inhibition whatever upon the MANUFACTURER thereof; only seeking to regulate the TRAFFICKING which clearly is a RETAIL SELLING; it is

urged that the law is not a police measure enacted in good faith and does not attain the objects which it really seeks, and states it seeks, to accomplish. The Act of the General Assembly of Ohio in question positively and expressly discriminating in favor of the local manufacturer as against the foreign one, in addition to the objections heretofore urged upon the authorities referred to is null and void under the Constitution and laws of the United States.

It is therefore respectfully urged upon this Court that the action and holding of the Honorable Albert Thompson, sitting as United States Circuit Judge at Cincinnati, dissolving the injunction and dismissing the bill should be reversed and set aside, and that this case should be remanded to the proper Circuit Court of the United States for the Southern District of Ohio for further and proper proceedings herein; that the injunction heretofore awarded may be perpetuated and made permanent; that the defendant below, Harry Brister, be perpetually enjoined and restrained from interfering in any manner with the complainant in and about its said business; and that all the relief prayed for in the bill of the complainant herein filed be decreed and adjudged to the complainant herein; and that this complainant may recover its costs by it, about its suit in this behalf expended.

All of which is respectfully submitted.

J. BERNARD HANDLAN,
Counsel for Appellant.

N. B.—All references to Ohio Statutes, and the Statute as printed and annexed to this brief are taken from the Eighth Edition of the Revised Statutes of Ohio by Giauque.

As bearing upon this case, this Honorable Court is urged to read in connection with this brief, the brief filed in behalf of the appellant, in case No. 316, October Term 1899, entitled Emil Stevens v. The State of Ohio; the same Counsel appearing in both cases, No. 316 and 317.

APPENDIX.

An Act providing against the evils resulting from the traffic in intoxicating liquors. (Passed and took effect May 14, 1886).

Dow Law.

(8892) Sec. 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO. That upon the business of trafficking in spirituous, vinous, malt, or any intoxicating liquors, there shall be assessed, yearly, and shall be paid into the county treasury, as hereinafter provided, by every person, corporation or copartnership engaged therein, and for each place where such business is carried on by or for such person, corporation or co-partnership, the sum of two hundred and fifty dollars. (As amended March 26, 1888.) Tax laid on liquor business.

(8893)) Sec. 2. That said assessment, together with any increase thereof as penalty thereon, shall attach and operate as a lien upon the real property on and in which such business is conducted, as of the fourth Monday of May each year ,and shall be paid at the times provided for by law for the payment of taxes on real or personal property within this State, to-wit: one-half on or before the twentieth day of June and one-half on or before the twentieth day of December of each year. Tax a lien when time of payment.

(8894) Sec. 3. That when any such business shall be commenced in any year after the fourth Monday of May, said assessment shall be proportionate in amount to the remainder of the assessment year, except that it shall be in no case less than twenty-five dollars, and the same shall attach and operate as a lien as aforesaid, at the date of, and be paid within ten days after such commencement; and whenever any person, corporation or co-partnership, engaged in such business, who has been assessed as aforesaid, and who has paid or is charged upon the tax duplicate with the full amount of said assessment, discontinues such business, the county auditor, upon being satisfied of that fact shall issue to such Tax for part of year; refunding orders, when issued.

person, corporation or co-partnership a refunding order for a proportionate amount of said assessment, except that it shall be in no case less than fifty dollars. (As amended March 26, 1888).

Collection of tax in case of non-payment.

(8895) Sec. 4. That if any person, corporation or co-partnership shall refuse or neglect to pay the amount due from them under the provisions of this act within the time therein specified, the county treasurer shall thereupon forthwith make said amount due with all penalties thereon, and four per cent. collection fees and costs, by distress and sale, as on execution of any goods and chattels of such person, corporation or co-partnership; he shall call at once at the place of business of each person, corporation or co-partnership, and in case of the refusal to pay the amount due he shall levy on the goods and chattels of such person, corporation or co-partnership, wherever found in said county, or on the bar, fixtures or furniture, liquors, leasehold and other goods and chattels used in carrying on such business, which levy shall take precedence of any and all liens, mortgages, conveyances or incumbrances hereafter taken or had on such goods and chattels, so used in carrying on such business; nor shall any claim of property by any third person to such goods and chattels, so used in carrying on such business avail against such levy so made by the treasurer, and no property, of any kind, of any person, corporation or co-partnership liable to pay the amount, penalty, interest and costs due under the provisions of this act, shall be exempt from said levy. The treasurer shall give notice of the time and sale of the personal property to be sold under this act, the same as in cases of the sale of personal property on execution; and all provisions of law applicable to sales of personal estate on execution shall be applicable to sales under this act, except as herein otherwise provided; and all moneys collected by him under this act shall be paid, after deducting his fees and costs, into the county treasury. In the event of the treasurer, under the levey provided for under this act, being unable to make the amount due thereunder, or any part thereof, the county auditor shall place the amount due and unpaid on the tax duplicate against the real estate in which said traffic is carried on,

and the same shall be collected as other taxes and assessments on said premises.

(8896) Sec. 5. That every assessor shall return to the county auditor, with his other returns, a statement upon a blank to be furnished by such auditor for that purpose, as to every place within his jurisdiction where such business is conducted, showing the name of the person, corporation or co-partnership engaged therein, a brief and accurate description of the premises where the same is conducted, and by whom owned; said statement shall be signed and verified before such assessor by such person, corporation or co-partnership. And if such person, corporation or co-partnership shall, on demand, refuse or fail to furnish the requisite information for such statement, or to sign or verify the same, such fact shall be returned by the assessor, and thereupon such assessment on said business shall be four hundred dollars. And if any assessment aforesaid shall not be paid when due, there shall be added a penalty thereto of twenty per centum which shall be collected therewith. (As amended March 26, 1888.) Asseseors' Returns. Penalties.

(8897) Sec. 6. The county auditor shall make and preserve duplicates of such assessments, alphabetically arranged, showing the amount and date of each assessment, by whom to be paid, and the premises whereon the same is a lien. And upon receiving satisfactory information of any such business liable to assessment or increased assessment, as aforesaid, not returned by the assessor, he shall forthwith enter the same upon such duplicate and upon the county treasurer's copy thereof. By the first Monday of June of each year, he shall make out and deliver to the county treasurer a copy of such duplicate, charging him with the full amount of such assessment to be collected and also with any additional assessment or increased assessment and penalties thereon. Auditors' Duplicates. See Sup

(8898) Sec. 7. The county treasurer shall collect and receipt for all assessments so returned to him, and if any assessment shall not be paid when due, he shall forthwith proceed as provided in section four of this act to collect the same and in case he shall fail to make such assessment from the goods and chattels therein describ- Collection by Treasurer.

ed, then said treasurer shall immediately proceed as provided in section 1104 of the Revised Statutes to enforce the lien for the same with the penalty thereon. And the provisions of said section 1104, and all other provisions of the law of this state relating to the assessment and collection of taxes, are hereby made applicable to the enforcement of liens and the collection of such assessments and penalties. The treasurer shall charge himself with all such assessments placed in his hands for collection and shall account to the auditor for the same together with all penalties collected thereunder.

Meaning of phrase "trafficking in intoxicating liquors," defined.

(8899) Sec. 8. The phrase "trafficking in intoxicating liquors" as used in this act, means the buying or procuring and selling of intoxicating liquors otherwise than upon prescription issued in good faith by reputable physicians in active practice, or for exclusively known mechanical, pharmaceutical or sacramental purposes, but such phrase does not include the manufacture of intoxicating liquors from the raw material, and the sale thereof at the manufactory, by the manufacturer of the same in quantities of one gallon or more at any one time. (As amended March 21, 1887.)

Manufacturers.

Distribution of Tax.

(8900) Sec. 9. That the revenues and fines resulting under the provisions of this act shall be distributed as follows, to-wit: In every county two-tenths of the money paid as herein provided, into the county treasury on account of any business aforesaid carried on in any city, village, hamlet or township, therein shall be placed to the credit of the general revenue fund of the state, and be paid into the state treasury by the county treasurers, as is provided in other cases; six-tenths of the money so paid shall, upon the warrant of the county auditor, be paid, on account of any business aforesaid carried on in any such municipal corporation into the treasury of such corporation, one-half of the credit of the police fund, and one-half of the credit of the general revenue fund thereof; provided in corporations having no police fund, the entire six-tenths shall be passed to the credit of the general revenue fund thereof. The remaining two-tenths part thereof, together with all other revenues resulting hereunder in said county, shall be passed to the credit of the poor fund of such county; provided, that in all

counties in which there is no county infirmary, said remaining two-tenths part thereof shall be passed to the credit of the infirmary fund or the poor fund of the township, village or city in which the same shall have been collected; and in such counties when the money is paid on account of any business carried on in any township outside of any such municipal incorporation; said six-tenths also shall be passed to the credit of the infirmary fund or the poor fund of said township; and provided, that in counties having a city of the first grade of the first cass with a city infirmary the above two-tenths part shall be divided between the city and county infirmary funds, in the proportion of the revenue received from the city to the revenue from the county outside the city. (As amended March 26, 1888.)

Notice of assessment. Duty of certain officers.

(8901) Sec. 10. That withn ten days after the passage of this act, each county auditor in the State is hereby directed to publish, by one insertion in some newspaper of general circulation in his county, a notice informing all persons engaged in the traffic of intoxicating liquors that the first assessment imposed by this act will be due and payable on or before the twentieth day of June, A. D. 1886. The attorney general and the prosecuting attorneys of the several counties are charged with the duty of seeing that the requirements of this section are observed, and may enforce the same, if necessary, by proceedings in mandamus. The county commissioners of the respective counties may allow their county auditor a reasonable compensation for the discharge of the duties imposed upon him by this act.

Closing of Saloons on Sunday. See Sup.

(8902) Sec. 11. That the sale of intoxicating liquors, whether distilled, malt, or vinous, on the first day of the week, commonly called Sunday, except by a regular druggist on the written prescription of a regular practicing physician for medical purposes only, is hereby declared to be unlawful, and all places where such intoxicating liquors are on other days sold or exposed for sale, except regular drug stores, shall on that day be closed, and whoever makes any such sale, or allows any such place to be open or remain open on that day, shall be fined in any sum not exceeding one hundred dollars, and not less than twenty-five dollars, and be imprisoned

in the county jail or city prison not less than ten days and not exceeding thirty days. In regular hotels and eating houses, the word "place" herein used shall be held to mean the room or part of room where such liquors are usually sold or exposed for sale, and the keeping of such room or part of room securely closed shall be held, as to such hotels and eating houses, as a closing of the place within the meaning of this act. And any municipal corporation shall have full power to regulate, restrain and prohibit ale, beer and porter houses, and other places where intoxicating liquors are sold at retail for any purpose or in any quantity other than is provided for in section 8 of this act, as amended March 21, 1887. But if any municipal corporation shall prohibit ale, beer and porter houses or other places where intoxicating liquors are sold within the limits of such corporation, a ratable proportion of the tax paid by the proprietors thereof for the unexpired portion of the year shall be returned to such proprietors. (As amended April 14, 1888.)

Hotels and eating houses.

Municipal regulation.

Minors and habitual drunkards. See Sup.

(8903) Sec. 12. Whoever sells intoxicating liquors to a minor except on the written order of his parents, guardian or family physician, or to a person intoxicated or in the habit of getting intoxicated, shall be fined not more than one hundred nor less than twenty-five dollars, and imprisoned not more than thirty nor less than five days.

Non-interdependence of section.

(8904) Sec. 13. The abrogation or repeal of any section or clause of this act shall not be held to abrogate or repeal any other section or clause thereof.

Sec. 14. Section 6941 of the Revised Statutes is hereby repealed.

Sec. 15. This act shall take effect and be in force from and after its passage.

AN ACT TO FIX THE TIME WHEN COUNTY TREASUERS SHALL PAY CERTAIN FUNDS INTO THE STATE TREASURY. (Passed and took effect April 15, 1889.)

(8905) Sec. 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO, That the county treasurers of this state, on or before the first day of January and the first day of July in each

year, shall report to the auditor of state the amount of money paid into the treasury of the county under the provisions of sections five and nine of an act to provide against the evils resulting from the traffic in intoxicating liquors, passed May 14, 1886, as amended March 26, 1888; and such treasurer shall, on or before the 10th day of January and the 10th day of July of each year, remit by draft or otherwise, as the auditor of state may direct, to the treasurer of state the money due the state as shown by such statement. When Dow tax to be paid into state treasury.

Sec. 2. This act shall take effect on its passage.

LOCAL OPTION IN TOWNSHIPS.

AN ACT TO FURTHER PROVIDE AGAINST THE EVILS RESULTING FROM THE TRAFFIC IN INTOXICATING LIQUORS BY LOCAL OPTION IN ANY TOWNSHIP IN THESTATE OF OHIO. (Passed and took effect March 3, 1888.)

(8906) Sec. 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO, That whenever one-fourth of the qualified electors of any township, residing outside of any municipal incorporation, shall petition the trustees therefor for the privilege to determine by ballot whether the sale of intoxicating liquors as a beverage shall be prohibited within the limits of such township, and without the limits of any such municipal incorporation, such trustees shall order a special election for the purpose, to be held at the usual place or places for holding township elections: and notice shall be given and the election conducted in all respects as provided by law for the election of township trustees; and only those electors shall be entitled to vote at such election who reside within the township and without the limits of any such municipal incorporation. A record of the result of such election shall be kept by the township trustees; and in all trials for violation of this act, the original entry of said record or a copy thereof certified by the township clerk, provided that it shows or states that a majority was against the sale, shall be prima facie evidence that the selling, furnishing, giving away or

Petition for prohibition of liquor trafic in townships.

Special election to be held. Notice and conduct of election.

Record of result of election; its value as evidence.

keeping a place, if it took place from and after thirty days from the day of the holding of said election, was then and there prohibited and unalwful.

Ballots to be voted at such election.

(8907) Sec. 2. Persons voting at any election held under the provisions of this act, who are opposed to the sale of intoxicating liquors as a beverage, shall have written or printed on their ballots, "Against the sale," and those who favor the sale of such liquors shall have written or printed on their ballots, "For the sale;" and if a majority of the votes cast at such election shall be "Against the sale," then from and after thirty days from the day of the holding of said election, it shall be unlawful for any person within the limits of such township and without the limits of such municipal corporation to sell, furnish or give away any intoxicating liquors to be used as a beverage, or to keep a place where such liquors are kept for sale, given away or furnished; and whoever sells, furnishes or gives away any intoxicating liquors as a beverage, or keeps a place where such liquors are kept for sale, given away or furnished, shall be fined not more than five hundred dollars, nor less than fifty dollars, and imprisoned in the county jail not exceeding six months; but nothing in this section shall be construed so as to prevent the manufacture and sale of cider, or sale of wine manufactured from the pure juice of the grape, cultivated in this state, nor to prevent (a) legally registered druggist from selling or furnishing pure wines or liquors for exclusively known medicinal, art, scientific, mechanical, or sacramental purposes; but this provision shall not be construed to authorize the keeping of a place where wine, cider or other intoxicating liquors are sold, kept for sale, furnished or given away as a beverage.

When the traffic in any township shall be unlawful.

Penalty for carrying on such prohibited traffic

Manufacture and sale of cider or native wine; registered druggists.

Sufficiency of indictments under this act.

(8908) Sec. 3. In indictments for violation of this act, it shall not be necessary to set forth the facts showing that the township has availed itself of the provisions of this act, but it shall be sufficient to plead simply that said selling, furnishing, giving away or keeping a place was then and there prohibited and unlawful.

Return of ratable proportion of liquor tax to dealer.

(8909) Sec. 4. In any township where the majority of the votes cast at such election shall be "Against the sale," and a dealer in intoxicating liquors who has paid

the special tax shall, by reason of said vote, discontinue his business, a ratable proportion of said tax paid by such dealer in intoxicating liquors for the unexpired portion of the year shall be returned to such dealer.

Another election may be ordered when.

(8910) Sec. 5. At any time after two years from the date of any election held under the provisions of this act, another election may be ordered as provided in section one.

Entry and record of result of election required by Sec. 1.

(8911) Sec. 6. The following shall be deemed a sufficient entry and record of the result of an election under this act as required under section one:

The State of Ohio, ...County,
.....Township, ss:

The special election held on the ....day of ....., A. D., ..., within and for said township, under the local option law, resulted as follows:

Whole number of votes "For the sale," .....
whole number of votes "Against the sale," .....
Attest: ....., Township Clerk.

Disposition of fines

(8912) Sec. 7. All fines collected under this act shall be paid into the county treasury and credited to the poor fund of the county.

Taking effect.

Sec. 8. This act shall take effect and be in force from and after its passage.

SALE PROHIBITED AT CERTAIN TIMES AND PLACES.

AN ACT TO PREVENT THE SALE OF INTOXICATING LIQUORS IN CITIES OF THE FIRST GRADE OF THE FIRST CLASS, DURING CERTAIN HOURS THEREIN NAMED.

(Passed and took effect April 30, 1885.)

Penalty for selling intoxicating liquors in Cincinnati between certain hours, except

(8913) Sec. 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO, That in cities of the first grade of the first class it shall be unlawful to barter, sell or dispose of any intoxicating liquors, whether distilled, malt or vinous ,on any day or night of the week between the hours of twelve o'clock p. m. and six o'clock a. m., except by regular druggist, on the written prescription of a regular practicing physician for medical purposes only. All places where such intoxicating liquors are sold, or exposed for sale, except by regular druggists, shall on any day or night of the

week be closed between said hours, and whoever makes any such sale or disposes of any such liquors, or allows any place to be open or remain open on such day or night between said hours, shall on conviction thereof, be fined in any sum not exceeding one hundred dollars, and be imprisoned in the county jail or city prison not exceeding thirty days or both, at the discretion of the court.

Sec. 2. This act shall take effect and be in force from and after its passage.

AN ACT TO PROHIBIT THE SALE OF INTOXICATING LIQUORS WITHIN FIVE HUNDRED YARDS OF A SCHOOL-HOUSE IN PROCESS OF CONSTRUCTION IN WILMINGTON, CLINTON COUNTY, OHIO. (Passed and took effect May 4th, 1885.)

Penalty for selling intoxicating liquors at certain places.

(8914) Sec. 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO, That whoever sells intoxicating liquors at or within five hundred yards of a school house in process of construction in Wilmington, Clinton county, Ohio, shall be fined not more than one hundred dollars, nor less than twenty-five dollars, or imprisoned not more than twenty days, or both; and on conviction of the owner or keeper thereof, the place wherein such intoxicating liquors are sold, shall, by order of the court, be shut up and abated as a nuisance.

Sec. 2. This act shall take effect and be in force from and after its passage.

AN ACT TO PREVENT THE SALE OF INTOXICATING LIQUOR WITHIN ONE-HALF MILE OF MIAMI CEMETERY, IN WARREN COUNTY, OHIO. (Passed April 27, 1885, and took effect May 1, 1885.)

Penalty for selling intoxicating liquors at certain places.

(8915) Sec. 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO, That it shall be and is hereby made unlawful to sell, give away or furnish any intoxicating liquor of any kind or description whatsoever within one-half mile of the grounds and premises of Miami cemetery, in Wayne Township, Warren County, Ohio; whoever sells, gives

away or furnishes any intoxicating liquor, in violation of this act, shall upon conviction, be fined in any sum not exceeding one hundred dollars nor less than twenty dollars, or imprisoned not more than sixty days, or both, at the discretion of the court.

Sec. 2. This act shall take effect and be in force from and after the first day of May, 1885.

AN ACT TO PREVENT THE SALE OF INTOXICATING LIQUORS WITHIN TWO MILES OF ANTIOCH COLLEGE, OR WILBERFORCE UNIVERSITY, GREENE COUNTY, OHIO, AND FOR OTHER PURPOSES THEREIN NAMED.

(Passed and took effect April 12th, 1889.)

Penalty for selling intoxicating liquors or keeping house of ill-fame at certain places

(8916) Sec. 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO, That whoever sells, or offers to sell, or offers to give away, any intoxicating liquors, or keeps a house of ill-fame at or within two miles of Antioch College, located at Yellow Springs, Greene County, Ohio, or within two miles of Wilberforce University, Greene County, Ohio, shall be fined not more than one hundred dollars nor less than twenty-five dollars, or imprisoned not more than sixty days, or both, at the discretion of the court. And on the conviction of the owner or keeper thereof, the place wherein such intoxicating liquors are sold shall, by order of the court, be shut up and abated as a nuisance.

Sec. 2. This act shall take effect on and after its passage.

INSTRUCTION IN SCHOOLS AS TO EFFECT OF AN ACT REQUIRING INSTRUCTIONS IN THE COMMON SCHOOLS, AND IN CERTAIN EDUCATIONAL INSTITUTIONS, AS TO THE EFFECT OF ALCOHOLIC DRINKS AND NARCOTICS ON THE HUMAN SYSTEM.

(Passed April 13, 1888; took effect January 1, 1889.)

Instructions as to effect of alcoholic drinks and narcotics on the human system required in public schools.

(8917) Sec. 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO, That the nature of alcoholic drinks and narcotics, and their effects on the human system in connection with

the subjects of physiology and hygiene, shall be included in the branches to be regularly taught in the common schools of the state; and in all educational institutions supported wholly or in part by money received from the State; and it shall be the duty of boards of education, and boards of such educational institutions, to make provisions for such instructions in the schools and institutions under their jurisdiction, and to adopt such methods as shall adapt the same to the capacity of the pupils in the various grades therein; but it shall be deemed a sufficient compliance with the requirements of this section if provision be made for such instructions orally only, and without the use of text-books by the pupils.

Provision therefor.

Oral instruction sufficient.

(8918) Sec. 2. No certificate shall be granted to any person on or after the first day of January, 1890, to teach in the common schools, or in any educational institution supported as aforesaid, who does not pass a satisfactory examination as to the nature of alcoholic drinks and narcotics, and their effects upon the human system.

Examination required of teachers.

(8819) Sec. 3. Any superintendent or principal of, or teacher in any common school or educational institution supported as aforesaid, who willfully refuses or neglects to give the instruction required by this act shall be dismissed from his or her employment.

Penalty for refusal or neglect to give such instruction.

Sec. 4. This act shall take effect and be in force from and after the first day of January, eighteen hundred and eighty-nine.

CONSTITUTIONAL PROVISION.

Sec. 9. No license to traffic in intoxicating liquors shall hereafter be granted in this state; but the General Assembly may, by law, provide against the evils resulting therefrom. Constitution of Ohio, Article 16, Sec. 9.